O/Cotton Control/52

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File No. 64/52

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Legal Department

G. **BRANCH**

Subject:—

Opinion on the

Cotton Control Act, 1942

O/Cotton Control/52

File No. 64/52

Gen. 191 e.

C O N T E N T S

Legal Department File No. O.Cotton Control/1952.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions on the Cotton Control Act, 1942.	
1.	G-19 12-1-52.	Questions (Whether the orders issued by this Government under (a) the Cotton Transport Act, 1923 and (b) the Bombay Cotton Control Act, 1942, are null and void in view of Government of India's Notification No.F. 30-8-/50E.P. dated 15-9-51 which provides that no order made under any law corresponding to the Essential Supplies (Temporary Powers) Act, 1946, shall have effect so as to prohibit or restrict the movement of cotton seeds from any place in that State to any other place within or outside that State or so as to regulate or control the price, production movement or distribution thereof in any manner whatsoever.	1-6.

J-E.27/7/56.5c.

PHG 2/8

NMG 2/8

Legal Department.

The questions for the consideration of the R.L.A. are whether the orders issued by this Government under (1) the Cotton Transport Act, 1923 and (2) the Bombay Cotton Control Act, 1942 are null and void in view of the Government of India's NotificationNo.F.30-8-/50 EP, dated the 15th September 1951 which provides thatno order made or deemed to have been made under any law correspodding to the Essential Supplies(Temporary Powers) Act, 1946 shall have effect so as to prohibit or restrict the movement of cotton seeds from any place in that State to any other place within or outside that State or so as to regulate or control the price, production, movement or distribution thereof in any manner whatsoever. The Cotton Transport Act,1923 was enacted by the Central Government before the coming into force of the Government of India Act, 1935. From the Adaptations made in the said Act, it appears that the said Act entirely falls in the Provincial List as no power has been reserved for the Central Government except in section 4(3) of the Act which however relates to the territories of any State in India. The said Act has been enacted to provide for the restriction and control of transport of cotton for the purpose of maintaining the quality and reputation of the cotton grown in certain areas in the States. The Bombay Cotton Control Act was first enacted in 1942 during the section 93 regime and it was re-enacted in 1947 (see Bom.Act 63 of 1947); The said Act is intended to provide for regulation and prohibition of the cultivation of any variety of cotton, of the mixing of the prohibited variety of cotton with other cotton and of the possession or use of, or trade in, the prohibited variety of cotton in any part of the Province of Bombay. The said Act partly falls under entries 20, 27 and 37 in the Provincial List and partly under entry 5 in the Concurrent List. The assent of the Governor-General was obtained to the Bombay Act 63 of 1947 which re-enacted the Bombay Cotton Control Act, 1942 for the reason thatsection 8(3) of the Act fell also under entry 5 in the Concurrent List. The India (Central Government and Legislature) Act, 1946 (9 and 10 Geo.6Ch.39) was passed by the British Parliament in 1946. Section 2 of the said Act provided that

notwithstanding anything contained in the Government of India Act, the India Central Legislature during the period mentioned in section 4 shall have power to make laws with respect to the matters mentioned in section 2. One of the matters which is mentioned in clause (a) of sub-section (1) of section 2 is as follows:-

"Trade and Commerse(whether or not within the Province) in and the production, supply and distribution of" cotton and wollen textiles", 'paper', etc." The said Act did not provide for "raw cotton". Sub-section (4) of section 2 of the said Act provided that sub-section (2) of section 107 of the Government of India Act, 1935 shall apply in relation to a law enacted by virtue of the said Act. The Essential Supplies (Temporary Powers) Act, 1946, was enacted by the Central Government in virtue of the powers given by the aforesaid Act of the British Parliament. In the Essential Supplies(Temporary Powers) Act 1946, the commodity inter alia, mentioned was 'cotton and wollen textiles'. There was no entry, such as 'raw cotton or cotton seeds' till the year 1949. The Cotton Transport Act, 1923 is an Act enacted prior to the coming into force of the Government of India Act, 1935. The Bombay Cotton Control Act, 1942 as re-enacted in the year 1947 is an Act made by the Bombay Legislature for the purposes entirely different from those for which the Essential Supplies (Temporary Powers) Act, 1946 was enacted. The said two Acts therefore cannot be said to be laws corresponding to the Essential Supplies (Temporary Powers) Act,1946 for the following reasons:-

(1) The Essential Supplies (Temporary Powers) Act, 1946 did not contain the commodity "raw cotton" or "cotton seeds" till it was amended by the Essential Supplies(Temporary Powers)(Second Amendment) Act, 1949 which came into force on the 10th December 1949. When the Bombay Cotton Control Act, which was re-enacted in the year 1947, the Provincial Government was fully competent to pass such a law. The item "Trade and commerce in "raw cotton ""was not made a concurrent subject under the Act of Parliament referred to above till the year 1949 in which year by the India (Central Government and Legislature)Amendment Act, 1949 the commodity "raw cotton" (including ginned cotton and unginned cotton or kapas) and

cotton seed" was inserted in the Parent Act. The said Act was enacted on the 31st May 1949. The question of the application of the principle of repugnancy laid down in section 107 of the Government of India Act, 1935, did not arise except in so far the Act was repugnant to entry 5 in the concurrent List.

(2) It might be contended that even though the Cotton Transport Act, 1923 and the Bombay Cotton Control Act, 1942 re-enacted in 1947) were passed before the Constitution came into force, under article 369 read wit article 254(1) the law made by the Parliament shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void. The article applies to a law made by Parliament. The Act under consideration namely the Essential Supplies (Temporary Powers) (Second Amendment) Act, 1949 was the Act of the Central legislature and not of Parliament and the said two Acts are not affected by Article 107(1).

(3) Both the Cotton Transport Act, 1923 and the Bombay Cotton Control Act, 1942 not being laws corresponding to the Essential Supplies (Tempprary Powers) Act, 1946, the Government of India's Notification in the Ministry of Food and Agriculaure No.E-30/8-50 E.P., dated the 15th September1951, would not also affect the said two Acts or orders issued thereunder. The further reason why it does not affect the two Acts is that the said two Acts, as pointed out above, mainly provide for the regulationn and control of the transport of cotton for the purpose of maintaining the quality of cotton given in certain areas and for prohibiting the cultivation of the variety of cotton in the Province. Whereas the said notification has declared any order restricting the movement of cotton seeds to be invalid. The question whether the said two Bombay Acts define "Cotton" to include "Cotton seed" is not material for the question at issue.

Id/- J.R.D.
11/1

Additional Secretary to Government.

U.R. to A. & F.D., No.G-19,

dated the 12th January 1952.

JPS.2747/564.